

(xi) A prohibition against changing the price.

(3) The county committee, or a person designated in writing by the county committee, shall approve each form CCC-1005 that conforms with the provisions in this section.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38329, Aug. 13, 1991; 61 FR 37624, July 18, 1996]

§ 1446.402 Approval as handler of contract additional peanuts.

(a) *General.* By June 15 preceding the beginning of the marketing year in which such additional peanuts will be acquired, any handler who plans to acquire contract additional peanuts in accordance with this part for crushing or for exporting must:

(1) *Application.* File an application with each marketing association that serves the area in which such handler plans to acquire contract additional peanuts. Such application:

(i) *Form.* Must be on a form or in a format provided by the marketing association.

(ii) *Method of supervision.* Must indicate the method of supervision, physical or nonphysical, selected by the handler for purposes of accounting for the disposition of any contract additional peanuts acquired by such handler.

(2) *Evidence of adequate assets and adequate facilities.* Provide evidence that is acceptable to the marketing association and CCC that such handler has:

(i) *Assets.* Adequate assets to assure compliance with the provisions in this part with respect to such handler's obligation to crush or export contract additional peanuts acquired by such handler; and

(ii) *Facilities.* Adequate facilities to handle the acquisition and disposition of any contract additional peanuts acquired by such handler.

(3) *Letter of credit for prior crop years.* Establish an irrevocable letter of credit, or increase any existing letter of credit applicable for a previous crop year, in an amount necessary to cover any outstanding marketing penalties on peanuts produced in such crop year which are still under administrative appeal or are unpaid. This requirement

is in addition to any letter of credit requirement for the current year.

(b) *Approval.* The marketing association, acting on behalf of CCC, shall approve, in accordance with this part, each application that is timely filed in accordance with this section, or is filed by such extended time as may be approved by the Executive Vice President, CCC, provided that in either case, the applicant:

(1) Has selected a method of supervision;

(2) Has a U.S. address;

(3) Has provided evidence of adequate assets and adequate facilities to assure compliance with the provisions in this part with respect to the disposition of contract additional peanuts; and

(4) Has complied with the requirements of paragraph (a)(3) of this section.

(c) *Rescission of approval.* Unless the Executive Vice President, CCC, shall otherwise agree in writing, a handler's previous approval to contract for the purchase of additional peanuts for exporting or crushing and to receive and handle such peanuts shall be considered to be rescinded upon such handler's use of facilities, other than those on which the approval was based, to receive, store, process, or ship contract additional peanuts. However, a rescission will not apply if substituted facilities are approved by the association, in accordance with instructions issued by CCC, when the handler can show, as determined by the association subject to review by the Executive Vice President, that the original facilities are no longer available for use due to circumstances beyond the handler's control such as, but not limited to, fire, flood, wind damage, or mechanical failure. In the event of rescission of a handler's approval, any purchases of peanuts from producers by such handler subsequent to the rescission will be considered as purchases of quota peanuts and will subject the handlers and producers to penalties, as prescribed by this part and in 7 CFR part 729 for marketing excess quota peanuts unless such peanuts are recorded on the producer's marketing card as a marketing of quota peanuts.

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(d) *Cost of supervision.* The handler shall bear the cost of supervision irrespective of the method of supervision such handler has chosen.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38329, Aug. 13, 1991]

§ 1446.403 Letter of credit.

(a) *Certification and financial guarantee (letter of credit)*—(1) *Certification.* In order to establish a letter of credit, each handler must certify to the applicable marketing association the quantity of additional peanuts the handler expects to contract for delivery by producers that are served by such marketing association. The certified poundage will be the basis for establishing the letter of credit for the applicable crop. If the certified poundage is less than the actual contracted poundage, the letter of credit required of the handler for the next marketing year shall be subject to increase, as provided in this section.

(2) *Letter of credit.* The handler must present an irrevocable letter of credit to each marketing association that serves the area in which a handler plans to contract or otherwise acquire contract additional peanuts. Such letter of credit shall be issued in a form and by a bank which is acceptable to CCC and except as provided in paragraph (d) of this section shall be submitted to the appropriate marketing association not later than July 31 and before marketing cards will be issued to producers for contract additional peanuts. Unless the provisions of paragraphs (b) and (c) of this section are applicable, the amount of the letter of credit for each area shall be equal to the amount determined by multiplying 140 percent of the national average quota price support rate by, for a handler selecting nonphysical supervision, 8 percent, or, for a handler selecting physical supervision, 5 percent, of the larger of:

(i) Ninety percent of the handler's contracted pounds as recorded on contracts approved by the county committee for the preceding marketing year and in the marketing area; or

(ii) The amount of additional peanuts the handler estimates will be contracted with producers, as certified to the marketing association, for delivery

during the current marketing year and in that marketing area.

(b) *Increase in letter of credit.* (1) The amount of the letter of credit required under paragraph (a) of this section shall be increased for any handler:

(i) Who has a poor performance record, as evidenced by previous penalty assessments for violations of the provisions of this part; or

(ii) Who, for purposes of handling peanuts is, as determined by CCC, a partnership, merger, joint venture, or other similar business relationship having officials who were officials of an organization having such a record or is composed in whole or in part by merger, succession, consolidation, association or assimilation, of entities with such a record; or

(iii) Whose total acquisition of farmers stock peanuts during the preceding marketing year from purchases of contract additional peanuts exceeded, by more than 3.0 percent, the pounds on which the letter of credit for the preceding marketing year was based. Nothing in this part shall prohibit CCC from demanding an increase in the letter of credit for the current year in the event the handler has significantly underestimated the handler's purchases for the current year.

(2) The increase in the letter of credit shall be determined in accordance with the guidelines set forth in paragraph (c) of this section.

(c) *Guidelines for increasing letters of credit*—(1) *Increased letter of credit due to history of program violation.* If the handler and/or related entity was assessed penalties for program violations for any of the previous three crop years, the percentage of the pounds of contracted peanuts to which the increase specified in paragraph (b) of this section shall be applied, shall be increased by 6 percent for each year of the three-year period in which such a penalty was assessed, except that:

(i) Such increase for a particular crop year shall be 3 percent rather than 6 percent if, for all violations for that crop year:

(A) The penalties were reduced by the Executive Vice President, CCC, and paid; or